

**IN THE UNITED STATE DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

DAVID J. DELAITTRE,

Plaintiff,

vs.

CAROLYN W. COLVIN, in her official  
capacity as Acting Commissioner of the  
UNITED STATES SOCIAL SECURITY  
ADMINISTRATION,

Defendant.

**NO.**

**COMPLAINT AND  
DEMAND FOR JURY  
TRIAL**

NOW COMES the Plaintiff, DAVID J. DELAITTRE, by and through counsel,  
and complains against the Defendant, CAROLYN W. COLVIN, in her official capacity  
as Acting Commissioner of the United States Social Security Administration, as follows:

**INTRODUCTION**

1. Plaintiff DAVID J. DELAITTRE (hereinafter referred to variously as "Plaintiff,"  
"Plaintiff DeLaittre" or "Judge DeLaittre") is a resident of Seattle, County of King and  
State of Washington.

2. Defendant CAROLYN W. COLVIN (Colvin) is the Acting Commissioner of the  
United States Social Security Administration.

1 3. DEBRA BICE is the Chief Administrative Law Judge (CALJ), Office of  
2 Disability Adjudication & Review; JOHN ALLEN is the Deputy Chief Administrative  
3 Law Judge (DCALJ), Office of Disability Adjudication and Review; SUSAN BROWN is  
4 the Regional Management Officer (RMO) of Region 10. Individuals identified in  
5 Paragraphs 2 through 3 are hereinafter collectively referred to as Defendant SSA.  
6

7 4. Judge DeLaittre is an employee of Defendant SSA. At present he is the Regional  
8 Chief Administrative Law Judge (RCALJ), Region 10, Office of Disability Adjudication  
9 and Review in Seattle, Washington.  
10

11 5. By letter dated October 29, 2015, Defendant SSA provided Judge DeLaittre  
12 with notice of right to file a civil action in U.S. District Court. Judge DeLaittre  
13 exhausted his administrative remedies, or in the alternative, is permitted to file his  
14 action in Federal District Court at this time as a matter of law.  
15

16 6. The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

17 7. Judge DeLaittre demands a jury trial on all claims asserted in this Complaint.  
18

### 19 **STATEMENT OF FACTS**

20 8. Judge DeLaittre is a 71-year-old blind male.

21 9. Judge DeLaittre served as a line Administrative Law Judge (ALJ) for Defendant  
22 SSA from 1991 until his appointment as the RCALJ in 2000.

23 10. No adverse actions have ever been taken prior to December 27, 2013, regarding  
24 Judge DeLaittre's performance or management.

25 11. Judge DeLaittre was qualified for the position of the RCALJ.

26 12. Defendant SSA was at all times relevant to this complaint aware of Judge  
27

1 DeLaittre's age, disability, accommodations, and his senior executive status.

2 13. It was Debra Bice and Susan Brown's position that the RMO should have more  
3 authority than the RCALJ over employees and ALJ's.

4 14. It was also Debra Bice and Susan Brown's position and that a blind RCALJ was  
5 not capable of shouldering the requirements of the office.

6 15. On numerous occasions, including in 2013, Judge DeLaittre counseled Marilyn  
7 Mauer, ALJ, regarding her failure to accommodate disabled recipients of social security  
8 benefits, and her unprofessional and abusive tone and manner towards recipients and/or  
9 staff.  
10

11 16. In response, in September 2013, Marilyn Mauer made allegations of harassment  
12 and hostile work environment against Plaintiff.

13 17. Marilyn Mauer's allegations of harassment included a complaint that Judge  
14 DeLaittre told her to smile, and asked her if she completed the emotional quotient test.

15 18. Assistant Deputy Chief Judge Frank Cristaudo provides training to Defendant  
16 SSA's employees regarding manager and judge's decorum.

17 19. Judge Cristaudo's motto is to "Have Fun and Smile."

18 20. Defendant SSA requires emotional intelligence or emotional quotient training for  
19 new managers.  
20

21 21. By letter dated December 2, 2014, Judge DeLaittre's counsel notified Defendant  
22 SSA that Marilyn Mauer simply accuses Plaintiff of reinforcing Defendant SSA's dictates  
23 to managers and judges regarding communication style and hearing decorum.  
24

25 22. The December 2, 2014 letter from Jeffery Campiche to Carolyn Colvin referenced  
26  
27

1 in the previous paragraph is attached as **Exhibit A** (without internal attachments).

2 23. In September 2013, Debra Bice launched an investigation against Judge DeLaittre  
3 based on Marilyn Mauer's allegations.

4 24. During the 2013 investigation of Marilyn Mauer's allegations, Lorraine Vega,  
5 Regional Director of Operations and Administration of Region 10 (RDOA), reported that  
6 Plaintiff had grabbed, bear hugged, and kissed her in an elevator in 2010.

7 25. Lorraine Vega also reported that Judge DeLaittre sexually harassed her in an  
8 elevator again in 2013.

9 26. Lorraine Vega had never made a report about Judge DeLaittre's alleged sexual  
10 harassment prior to the investigation of Marilyn Mauer's allegations against him.

11 27. Although Lorraine Vega told at least one or more managers about the alleged  
12 harassment described above, none of the managers documented or reported the  
13 allegations.

14 28. Lorraine Vega and the managers to whom she reported the allegations against  
15 Plaintiff failed to follow the strict SSA/EEO policies regarding the reporting of  
16 harassment in the workplace.

17 29. On December 27, 2013, John Allen placed Judge DeLaittre on administrative  
18 leave pending disciplinary action based on the allegations against Plaintiff identified  
19 above.

20 30. Judge Allen removed Plaintiff from his management duties.

21 31. Judge Allen instructed Judge DeLaittre to have no communication with any  
22 Region 10 employees except for "pleasantries."

1 32. Judge Allen did not provide his definition of “pleasantries” to Judge DeLaittre.

2 33. Defendant SSA prohibited Plaintiff from travelling for work.

3 34. Defendant SSA prohibited Plaintiff from participating in meetings, including  
4 meetings of a social nature.

5 35. Defendant SSA limited Plaintiff to only one restroom facility.

6 36. Defendant SSA stripped Plaintiff of all of his duties as the RCALJ.

7 37. Defendant SSA imposed the limitations identified above on Plaintiff before  
8 Defendant SSA completed the investigation into the allegations against Plaintiff, and  
9 specifically before Defendant SSA conducted appropriate interviews, including  
10 interviews of other female workers in the Region 10 office.

11 38. Beginning in September 2013, Defendant SSA conducted an almost two year  
12 investigation of Judge DeLaittre for claims of sexual harassment and hostile work  
13 environment based on the allegations against him as described above.

14 39. Defendant SSA’s investigation identified in the preceding paragraph was biased,  
15 incomplete, and unprofessional.

16 40. In a letter dated February 18, 2014, Judge DeLaittre made Defendant SSA aware  
17 of the numerous defects and deficiencies in Defendant SSA’s investigation identified  
18 above.

19 41. The February 18, 2014 letter from Judge DeLaittre to Judge Allen referenced in  
20 the previous paragraph is attached as **Exhibit B**.

21 42. Defendant SSA refused to address or respond to the Plaintiff’s concerns identified  
22 in the preceding two paragraphs.

1 43. Defendant SSA selectively chose to accept as credible only those witnesses who  
2 had a discriminatory animus towards Plaintiff because he is blind.

3 44. During the investigation identified above, Defendant SSA unjustifiably endorsed  
4 the testimony of managers in the Region 10 office who have ridiculed Plaintiff's  
5 disability (blindness), stating that he "bounces off the walls."

7 45. During the investigation identified above, Defendant SSA unjustifiably endorsed  
8 the testimony of Marilyn Mauer, who refuses to allow service dogs and assistive devices  
9 for claimants in her hearings.

10 46. Defendant SSA's questioning of Plaintiff in February 2014 was a hostile,  
11 adversary interrogation, lacking in common decency.

13 47. Defendant SSA asked Plaintiff, "Have you ever stated that you hired Kathleen  
14 Williams because she has "big tits"?"

15 48. Defendant SSA had no credible evidence to justify the question identified in the  
16 previous paragraph.

18 49. Defendant SSA subjected Plaintiff to scorn, humiliation, and gossip, specifically  
19 gossip by Susan Brown, Lorraine Vega, Jeff Lonkert, and Elaine Otti of allegations that  
20 he had sexual or sexualized relationships with a number of women in the office.

22 50. Defendant SSA has done nothing to prevent the managers of the Region 10 office  
23 from continuing to spread malicious rumors about Plaintiff.

24 51. The ongoing harassment of Judge DeLaitre, and the false allegations and  
25 subsequent investigation described herein were a pretext in an attempt to force Judge  
26 DeLaitre to resign from his position.

1 52. On or about November 26, 2014, Judge DeLaittre filed a formal Complaint with  
2 the EEO alleging discrimination based on age, sex, disability, and retaliation,

3 53. On or about December 12, 2014, Judge John Allen informed Judge DeLaittre that  
4 the employee who had been his assistant and accommodation for the past 15 years,  
5 Kathleen Williams, was being replaced by an employee that Defendant SSA would  
6 interview and hire.

7  
8 54. The December 12, 2015 email from Judge Allen to Judge DeLaittre referenced in  
9 the previous paragraph is attached as **Exhibit C**.

10  
11 55. Judge Allen gave no valid reason for the replacement of Judge DeLaittre's  
12 reasonable accommodation, Kathleen Williams.

13 56. Lorraine Vega falsely and without any factual basis accused Kathleen Williams of  
14 trespassing into managers' offices.

15  
16 57. The accusations against Kathleen Williams described in the preceding paragraph  
17 created additional difficulties for Plaintiff in utilizing his accommodation.

18 58. On or about March 23, 2015, Judge Allen also informed Judge DeLaittre that he  
19 was no longer allowed to use a parking pass that had been assigned as a condition of his  
20 employment as a Senior Executive for the previous 15 years, which accommodated him  
21 in the fulfillment of all of his work-related duties.

22  
23 59. The March 23, 2015 email from Judge Allen to Judge DeLaittre referenced in the  
24 previous paragraph is attached as **Exhibit D**.

25 60. Plaintiff used his parking space so employees who assisted him with getting to  
26 and from work and with work-related travel in Region 10 would have a place to park.  
27

1 61. Judge Allen's removal of the parking pass left Judge DeLaittre with only public  
2 transportation or family support for commuting, causing him added stress and difficulties  
3 in commuting to work in a reliable and safe manner.

4  
5 62. Defendant SSA unilaterally changed Plaintiff's reasonable accommodation and  
6 parking pass without any interactive discussion about Judge DeLaittre's need for  
7 accommodations.

8 63. On February 17, 2015, Debra Bice filed an MSPB action against Judge DeLaittre.

9  
10 64. The MSPB action against Plaintiff was filed despite the fact that Debra Bice knew  
11 or should have known that one or more of the specifications contained in the MSPB  
12 action were untrue.

13 65. Defendant SSA refused to provide Judge DeLaittre with reasonable  
14 accommodations for the defense of the MSPB action against him, and he had to use his  
15 wife as a reader.

16  
17 66. Judge DeLaittre's wife was never compensated for her services as a reader.

18 67. On February 19, 2015, Debra Bice determined that the allegations of her  
19 administrative investigation identified above were unfounded for either sexual harassment  
20 or hostile work environment.

21  
22 68. The February 19, 2015 letter from Debra Bice to Judge DeLaittre referenced in  
23 the previous paragraph is attached as **Exhibit E**.

24 69. Notwithstanding the findings of the SSA investigation, Debra Bice gave Judge  
25 DeLaittre notice that she will still be taking other actions against him.

26  
27 70. Debra Bice's actions herein are both discriminatory and retaliatory.



1 71. Due to Defendant SSA's actions, Plaintiff has sustained damages including  
2 pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of  
3 enjoyment of life, physical illness, other non-pecuniary losses, attorney's fees and costs.  
4

5 **COUNT ONE**  
6 **DISCRIMINATION BASED ON DISABILITY**  
7 **29 U.S.C. § 791, 794**

8 72. Plaintiff repeats, realleges, and incorporates herein by reference the allegations  
9 contained in Paragraphs 1 through 71 of this complaint.

10 73. Plaintiff is a qualified individual with a disability that substantially limits a major  
11 life activity. Defendant SSA was aware of Plaintiff's disability. Plaintiff was qualified to  
12 fill the role of Regional Chief Administrative Law Judge. Defendant SSA took adverse  
13 action against Plaintiff by constructively removing Plaintiff from his role. Plaintiff was  
14 treated differently because of his disability.

15 74. Defendant SSA failed to accommodate Plaintiff's disability by removing or  
16 modifying Plaintiff's existing reasonable accommodations, including his assistant/reader  
17 and parking pass. These accommodations were available, effective, and would not have  
18 posed an undue hardship to Defendant SSA.  
19

20 75. Defendant SSA subjected Plaintiff to a hostile work environment. Plaintiff  
21 suffered unwanted harassment through Defendant SSA's actions as described herein  
22 above. The harassment was based on Plaintiff's disability. The harassment was  
23 sufficiently severe or pervasive to alter a term, condition, or privilege of employment.  
24  
25  
26  
27  
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**COUNT TWO**  
**AGE DISCRIMINATION**  
**29 U.S.C. § 623, 633(a)**

76. Plaintiff repeats, realleges, and incorporates herein by reference the allegations contained in Paragraphs 1 through 75 of this Complaint.

77. Plaintiff is a member of a protected class by virtue of his age, 40 years of age or over at all times relevant to this complaint. Defendant SSA constructively removed Plaintiff due to Plaintiff's age.

78. The hostile and abusive working environment as set forth herein above was created by Defendant's discriminatory conduct based on Plaintiff's age.

**COUNT THREE**  
**RETALIATION**  
**42 U.S.C. § 2000e-3(a)**  
**29 U.S.C. § 623(d)**

79. Plaintiff repeats, realleges, and incorporates herein by reference the allegations contained in Paragraphs 1 through 78.

80. Plaintiff is a member of a protected class because he previously engaged in EEO activity. Defendant was directly aware of Plaintiff's prior EEO activity.

81. Defendant SSA modified Plaintiff's reasonable accommodations and filed baseless MSPB claims against Plaintiff, which were aimed at dissuading Plaintiff from making or supporting a charge of discrimination. This action was taken due to Plaintiff's EEO complaint.

**COUNT FOUR  
DUE PROCESS  
Fifth Amendment**

82. Plaintiff repeats, realleges, and incorporates herein by reference the allegations contained in Paragraphs 1 through 81.

83. Defendant SSA took adverse employment action against Plaintiff without a prompt, thorough, and impartial investigation.

84. Defendant SSA had no policy or procedure to ensure due process in the Administrative Investigation.

85. As a result of the Defendant's improper and unprofessional investigation, Judge DeLaittre has been deprived of his Due Process, and has sustained damages.

**COUNT FIVE  
SEX DISCRIMINATION  
42 U.S.C. § 2000e et seq.**

86. Plaintiff repeats, realleges, and incorporates herein by reference the allegations contained in Paragraphs 1 through 85 of this Complaint;

87. Defendant SSA constructively removed Plaintiff due to Plaintiff's sex.

88. The hostile and abusive working environment as set forth herein above was created by Defendant SSA's discriminatory conduct based on Plaintiff's sex.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff prays that this Court:

1. Award Plaintiff compensatory and punitive damages, the amount of which is to be determined at trial but is not less than \$1,000;

2. Award Plaintiff his costs and reasonable attorneys fees incurred in this action; and
3. Grant such other relief as the Court may deem just and proper.

Dated this 4<sup>th</sup> day of December, 2015.

/s/ John C. Andrews

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